

U.S. Patent Application Serial No. **10/538,916**
Response filed October 14, 2008
Reply to OA dated August 19, 2008

REMARKS

Claims 1 and 17 are pending in this application. Claims 1 and 17 are amended herein. Upon entry of this amendment, claims 1 and 17 will be pending. Entry of this amendment and reconsideration of the rejections are respectfully requested.

No new matter has been introduced by this Amendment. Support for the amendments to the claims is discussed below.

Request for Interview

Applicant has attached an Applicant Initiated Interview Request Form, requesting an interview to discuss the present Response. The Examiner is requested to telephone Applicant's agent to schedule an interview.

Claims 1 and 17 are rejected under 35 U.S.C. §102(b) as being anticipated by Garner et al. (U.S. 5,639,940). (Office action p. 3)

Reconsideration of the rejection is respectfully requested in view of the clarifying amendments to claims 1 and 17. The claims have been amended as follows: "... protein ~~having~~ consisting of the amino acid sequence as shown in SEQ ID NO: 1 in the sequence listing." The amendment clarifies that the claimed **protein** has **exactly** that sequence, that is, has N- and C-termini at the beginning and end, respectively, of the given sequence (SEQ ID NO: 1). Support for this amendment may be found throughout the specification in the disclosure of the 5.9 kDa protein corresponding to SEQ ID NO: 1 (see, for example, page 9, lines 4-7).

U.S. Patent Application Serial No. **10/538,916**

Response filed October 14, 2008

Reply to OA dated August 19, 2008

In the rejection, the Examiner states:

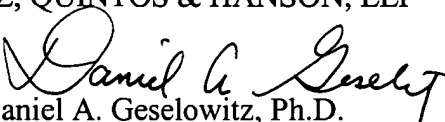
"Claims 1 and 17 are rejected because they claim a protein having SEQ ID NO: 1 (claim 1), which includes **any protein having SEQ ID NO: 1 embedded in it**, and Garner et al. teach a **sequence that comprises** SEQ ID NO: 1 (claim 17)." (emphasis added)

Therefore, the present clarifying amendment distinguishes the present claims from Garner, in which the disclosed sequence does not terminate at either the position corresponding to the beginning or end of SEQ ID NO: 1.

If, for any reason, it is felt that this application is not now in condition for allowance, the Examiner is requested to contact the applicants' undersigned agent at the telephone number indicated below to arrange for an interview to expedite the disposition of this case.

In the event that this paper is not timely filed, the applicants respectfully petition for an appropriate extension of time. Please charge any fees for such an extension of time and any other fees which may be due with respect to this paper, to Deposit Account No. 01-2340.

Respectfully submitted,
KRATZ, QUINTOS & HANSON, LLP


Daniel A. Geselowitz, Ph.D.
Agent for Applicants
Reg. No. 42,573

DAG/xl

Atty. Docket No. **050337**
Suite 400
1420 K Street, N.W.
Washington, D.C. 20005
(202) 659-2930



23850

PATENT & TRADEMARK OFFICE

Enclosure: Applicant Initiated Interview Request Form

H:\050\050337\Response in re FOA of 08-19-08